

AMENDED IN SENATE MAY 10, 2005

SENATE BILL

No. 779

Introduced by Senator Escutia

February 22, 2005

An act to ~~add Section 1043.1 to the Evidence Code, and to amend Sections 832.5 and 832.7~~ *amend Section 1005 of the Code of Civil Procedure, to amend Sections 1043 and 1045 of the Evidence Code, and to amend Section 832.5 of the Penal Code, relating to discovery of peace officer personnel records.*

LEGISLATIVE COUNSEL'S DIGEST

SB 779, as amended, Escutia. Peace officers: complaints: discovery.

Existing law requires law enforcement agencies to establish procedures for investigating public complaints against officers and to maintain files regarding those complaints, as specified. Existing law also establishes discovery procedures for obtaining those files for criminal and civil cases.

This bill would require law enforcement agencies to ~~maintain personnel files containing information regarding complaints against officers, including~~ *retain for at least 15 years all complaints and related reports and findings in a file separate from an officer's general personnel file that shall also contain information about an officer that manifests misconduct involving dishonesty or moral turpitude and information required to be produced in criminal cases by the United States Constitution or the California Constitution. It would ~~establish~~ modify the discovery procedures for obtaining information from those files that is constitutionally required to be disclosed in criminal cases. The bill would require the district attorney or Attorney General to obtain disclosure of the files for the defendant in a criminal case and officer personnel files, provide for the*

disclosure of the entire complaint file, and expand the permissible uses of this information, as specified.

By imposing additional duties on local law enforcement and local prosecuting entities, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1043.1 is added to the Evidence Code;~~
2 ~~to read:~~
3 ~~1043.1. (a) Notwithstanding any other law, disclosure of~~
4 ~~peace officer or custodial officer personnel records retained as~~
5 ~~provided in subdivision (e) of Section 832.5 of the Penal Code~~
6 ~~shall occur as provided in this section.~~
7 ~~(b) In any criminal case, a district attorney's office, the~~
8 ~~Attorney General's office, a city prosecutor's office, or a grand~~
9 ~~jury, may obtain disclosure of records retained as provided in~~
10 ~~subdivision (e) of Section 832.5 of the Penal Code, by making a~~
11 ~~request in writing to the law enforcement agency that maintains~~
12 ~~custody of the records. The law enforcement agency shall make~~
13 ~~disclosure to the prosecutorial agency or grand jury within 10~~
14 ~~days of the date the request is made. A request pursuant to this~~
15 ~~subdivision is sufficient if it specifies the name of the officers~~
16 ~~involved and specifies that the request is made pursuant to this~~
17 ~~section or subdivision (e) of Section 832.5 of the Penal Code. A~~
18 ~~prosecutor seeking disclosure shall, at the time that the request is~~
19 ~~made, serve the defendant with written notice. The request for~~
20 ~~disclosure may be made at any stage of the proceeding, provided~~
21 ~~however, that the initial request shall be made not less than 30~~
22 ~~days prior to trial. A prosecutor may make multiple requests in~~

1 any case. The prosecutor shall disclose to the defendant all
2 information required to be produced by the Constitution of the
3 United States.

4 (e) In any criminal case in which the prosecutorial agency
5 prosecuting the case has declined or failed to request disclosure
6 of records retained as provided in subdivision (c) of Section
7 832.5 of the Penal Code, the defendant may make a request in
8 writing to the law enforcement agency maintaining custody of
9 the records to deliver the records to the court for review by the
10 judge hearing the criminal case. The law enforcement agency
11 shall deliver the records to the judge within 10 days of the date
12 the request is made. A request pursuant to this subdivision is
13 sufficient if it specifies the name of the officer involved, specifies
14 that the request is made pursuant to this section or subdivision (e)
15 of Section 832.5, and specifies that no such request has been
16 made by the prosecution. The judge hearing the criminal case
17 shall review the provided records and shall release to the
18 defendant all information required to be disclosed by the
19 Constitution of the United States.

20 (d) In a criminal case in which the prosecution has made a
21 request pursuant to subdivision (a), the defendant may request
22 that the judge hearing the criminal case review the records
23 provided by the law enforcement agency when the defendant
24 makes a showing upon affidavit or declaration establishing
25 reasonable cause to believe that constitutionally mandated
26 information exists in a personnel file maintained pursuant to
27 subdivision (c) of Section 832.5 of the Penal Code, and that
28 either the prosecution or the law enforcement agency has failed
29 to disclose the information. A hearing on this request shall be
30 held within 10 days of the making of the request and the trial
31 court shall examine the law enforcement records and shall
32 disclose all information required to be disclosed by the
33 Constitution of the United States.

34 (e) Information disclosed pursuant to this section may be used
35 in any criminal case in which it is relevant.

36 (f) Information disclosed by a law enforcement agency either
37 to a court or to a prosecutorial agency shall be retained by the
38 court or agency to allow review by an appellate court.

39 *SECTION 1. Section 1005 of the Code of Civil Procedure is*
40 *amended to read:*

1 1005. (a) Written notice shall be given, as prescribed in
2 subdivisions (b) and (c), for the following motions:

3 (1) Notice of Application and Hearing for Writ of Attachment
4 under Section 484.040.

5 (2) Notice of Application and Hearing for Claim and Delivery
6 under Section 512.030.

7 (3) Notice of Hearing for Claim of Exemption under Section
8 706.105.

9 (4) Motion to Quash Summons pursuant to subdivision (b) of
10 Section 418.10.

11 (5) Motion for Determination of Good Faith Settlement
12 pursuant to Section 877.6.

13 ~~(6) Hearing for Discovery of Peace Officer Personnel Records~~
14 ~~pursuant to Section 1043 of the Evidence Code.~~

15 ~~(7) Notice of Hearing of Third-Party Claim pursuant to~~
16 ~~Section 720.320.~~

17 ~~(8)~~

18 (7) Motion for an Order to Attend Deposition more than 150
19 miles from deponent's residence pursuant to paragraph (3) of
20 subdivision (e) of Section 2025.

21 ~~(9)~~

22 (8) Notice of Hearing of Application for Relief pursuant to
23 Section 946.6 of the Government Code.

24 ~~(10)~~

25 (9) Motion to Set Aside Default or Default Judgment and for
26 Leave to Defend Actions pursuant to Section 473.5.

27 ~~(11)~~

28 (10) Motion to Expunge Notice of Pendency of Action
29 pursuant to Section 405.30.

30 ~~(12)~~

31 (11) Motion to Set Aside Default and for Leave to Amend
32 pursuant to Section 585.5.

33 ~~(13)~~

34 (12) Any other proceeding under this code in which notice is
35 required and no other time or method is prescribed by law or by
36 court or judge.

37 (b) Unless otherwise ordered or specifically provided by law,
38 all moving and supporting papers shall be served and filed at
39 least 16 court days before the hearing. The moving and
40 supporting papers served shall be a copy of the papers filed or to

be filed with the court. However, if the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, and if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required 16-day period of notice before the hearing shall be increased by two calendar days. Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion, papers opposing a motion, or reply papers governed by this section. All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days, and all reply papers at least five court days before the hearing.

The court, or a judge thereof, may prescribe a shorter time.

(c) Notwithstanding any other provision of this section, all papers opposing a motion and all reply papers shall be served by personal delivery, facsimile transmission, express mail, or other means consistent with Sections 1010, 1011, 1012, and 1013, and reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time the opposing papers or reply papers, as applicable, are filed. This subdivision applies to the service of opposition and reply papers regarding motions for summary judgment or summary adjudication, in addition to the motions listed in subdivision (a).

The court, or a judge thereof, may prescribe a shorter time.

SEC. 2. Section 1043 of the Evidence Code is amended to read:

1043. (a) In any case in which discovery or disclosure is sought of peace or custodial officer personnel records or records maintained in the Pitchess Discovery File pursuant to Section 832.5 of the Penal Code or information from those records, the party seeking the discovery or disclosure shall file a written motion with the appropriate court or administrative body upon written notice to the governmental agency which has custody and control of the records. ~~The written notice shall be given at the~~

1 ~~times prescribed by subdivision (b) of Section 1005 of the Code~~
2 ~~of Civil Procedure. The moving party shall notice the motion not~~
3 ~~less than ten calendar days prior to the hearing date. Upon~~
4 receipt of the notice the governmental agency served shall
5 immediately notify the individual whose records are sought.
6 *Failure of the agency to notify the individual whose records are*
7 *sought shall not prevent the motion from being heard.*

8 (b) The motion shall include all of the following:

9 (1) Identification of the proceeding in which discovery or
10 disclosure is sought, the party seeking discovery or disclosure,
11 the peace or custodial officer whose records are sought, the
12 governmental agency which has custody and control of the
13 records, and the time and place at which the motion for discovery
14 or disclosure shall be heard.

15 (2) A description of the type of records or information sought.

16 (3) Affidavits showing good cause for the discovery or
17 disclosure sought, setting forth the materiality thereof to the
18 subject matter involved in the pending litigation ~~and stating upon~~
19 ~~reasonable belief that the governmental agency identified has the~~
20 ~~records or information from the records.~~

21 (c) No hearing upon a motion for discovery or disclosure shall
22 be held without full compliance with the notice provisions of this
23 section except upon a showing by the moving party of good
24 cause for noncompliance, or upon a waiver of the hearing by the
25 governmental agency identified as having the records.

26 (d) *In a criminal case, information ordered disclosed shall be*
27 *disclosed to all parties to the action.*

28 SEC. 3. *Section 1045 of the Evidence Code is amended to*
29 *read:*

30 1045. (a) Nothing in this article shall be construed to affect
31 the right of access to records of complaints, or investigations of
32 complaints, or discipline imposed as a result of those
33 investigations, concerning an event or transaction in which the
34 peace officer or custodial officer, as defined in Section 831.5 of
35 the Penal Code, participated, or which he or she perceived, and
36 pertaining to the manner in which he or she performed his or her
37 duties, provided that information is relevant to the subject matter
38 involved in the pending litigation.

39 (b) In determining relevance, the court shall examine the
40 information in chambers in conformity with Section 915, and

1 shall *disclose the entire complaint file of all complaints and all*
2 *information that manifests misconduct involving dishonesty or*
3 *moral turpitude determined to be relevant, but shall exclude*
4 *from disclosure both of the following:*

5 (1) ~~Information consisting of complaints concerning conduct~~
6 ~~occurring more than five years before the event or transaction~~
7 ~~that is the subject of the litigation in aid of which discovery or~~
8 ~~disclosure is sought.~~

9 (2) ~~In any criminal proceeding the conclusions of any officer~~
10 ~~investigating a complaint filed pursuant to Section 832.5 of the~~
11 ~~Penal Code.~~

12 (3)

13 (2) Facts sought to be disclosed that are so remote as to make
14 disclosure of little or no practical benefit.

15 (c) In determining relevance where the issue in litigation
16 concerns the policies or pattern of conduct of the employing
17 agency, the court shall consider whether the information sought
18 may be obtained from other records maintained by the employing
19 agency in the regular course of agency business which would not
20 necessitate the disclosure of individual personnel records.

21 (d) Upon *noticed* motion seasonably made by the
22 governmental agency ~~which~~ *that* has custody or control of the
23 records to be examined or by the officer whose records are
24 sought, and upon good cause showing the necessity thereof, the
25 court may make any order which justice requires to protect the
26 officer or agency from unnecessary annoyance, embarrassment or
27 oppression.

28 (e) ~~The court shall, in any case or proceeding permitting the~~
29 ~~disclosure or discovery of any peace or custodial officer records~~
30 ~~requested pursuant to Section 1043, order that the records~~
31 ~~disclosed or discovered may not be used for any purpose other~~
32 ~~than a court proceeding pursuant to applicable law. The records~~
33 *disclosed may be used in any court proceeding in which they are*
34 *relevant. A court may, upon noticed motion, and upon good*
35 *cause showing the necessity thereof, order that the records*
36 *disclosed may be used only in the case for which disclosure was*
37 *ordered.*

38 ~~SEC. 2.~~

39 SEC. 4. Section 832.5 of the Penal Code is amended to read:

1 832.5. (a) (1) Each department or agency in this state that
2 employs peace officers shall establish a procedure to investigate
3 complaints by members of the public against the personnel of
4 these departments or agencies, and shall make a written
5 description of the procedure available to the public.

6 (2) Each department or agency that employs custodial officers,
7 as defined in Section 831.5, may establish a procedure to
8 investigate complaints by members of the public against those
9 custodial officers employed by these departments or agencies,
10 provided however, that any procedure so established shall
11 comply with the provisions of this section and with the
12 provisions of Section 832.7.

13 ~~(b) Complaints and any reports or findings relating to these~~
14 ~~complaints shall be retained for a period of at least five years. All~~
15 ~~complaints retained pursuant to this subdivision may be~~
16 ~~maintained either in the peace or custodial officer's general~~
17 ~~personnel file or in a separate file designated by the department~~
18 ~~or agency as provided by department or agency policy, in~~
19 ~~accordance with all applicable requirements of law. However,~~
20 ~~prior to any official determination regarding promotion, transfer,~~
21 ~~or disciplinary action by an officer's employing department or~~
22 ~~agency, the complaints described by subdivision (c) shall be~~
23 ~~removed from the officer's general personnel file and placed in~~
24 ~~separate file designated by the department or agency, in~~
25 ~~accordance with all applicable requirements of law.~~

26 (e)

27 (b) All complaints and any reports or findings related to those
28 complaints shall also be retained in a file separate from the
29 officer's general personnel file that shall also contain information
30 about the officer *that manifests misconduct involving dishonesty*
31 *or moral turpitude as well as information* required to be
32 produced in criminal cases by the Constitution of the United
33 States or the Constitution of the State of California. Information
34 contained in the file shall be retained for at least five years
35 beyond the officer's separation from the employing department
36 and in any event no less than 15 years from the date that the
37 complaint is made. *This file may be referred to as the Pitchess*
38 *Discovery File.*

39 (c) *Complaints retained pursuant to this section also may be*
40 *maintained in the peace or custodial officer's general personnel*

1 *file in accordance with all applicable requirements of law.*
2 *However, prior to any official determination regarding*
3 *promotion, transfer, or disciplinary action by an officer's*
4 *employing department or agency, the complaints described by*
5 *subdivision (d) shall be removed from the officer's general*
6 *personnel file.*

7 (d) Complaints by members of the public that are determined
8 by the peace or custodial officer's employing agency to be
9 frivolous, as defined in Section 128.5 of the Code of Civil
10 Procedure, or unfounded or exonerated, or any portion of a
11 complaint that is determined to be frivolous, unfounded, or
12 exonerated, shall not be maintained in that officer's general
13 personnel file. However, these complaints shall be retained in
14 other, separate files, *including the Pitchess Discovery file*, that
15 shall be deemed personnel records for purposes of the California
16 Public Records Act (Chapter 3.5 (commencing with Section
17 6250) of Division 7 of Title 1 of the Government Code) and
18 Section 1043 of the Evidence Code. ~~In addition, complaints and~~
19 ~~any reports relating to the complaints defined in this subdivision~~
20 ~~shall be retained in the separate file specified in subdivision (c).~~

21 (1) Management of the peace or custodial officer's employing
22 agency shall have access to the files described in this subdivision.

23 (2) Management of the peace or custodial officer's employing
24 agency shall not use the complaints contained in these separate
25 files for punitive or promotional purposes except as permitted by
26 subdivision (f) of Section 3304 of the Government Code.

27 (3) Management of the peace or custodial officer's employing
28 agency may identify any officer who is subject to the complaints
29 maintained in these files which require counseling or additional
30 training. However, if a complaint is removed from the officer's
31 personnel file, any reference in the personnel file to the
32 complaint or to a separate file shall be deleted.

33 (e) As used in this section, the following definitions apply:

34 (1) "General personnel file" means the file maintained by the
35 agency containing the primary records specific to each peace or
36 custodial officer's employment, including evaluations,
37 assignments, status changes, and imposed discipline.

38 (2) "Unfounded" means that the investigation clearly
39 established that the allegation is not true.

1 (3) “Exonerated” means that the investigation clearly
2 established that the actions of the peace or custodial officer that
3 formed the basis for the complaint are not violations of law or
4 department policy.

5 SEC. 3. Section 832.7 of the Penal Code is amended to read:

6 ~~832.7. (a) Peace officer or custodial officer personnel records~~
7 ~~and records maintained by any state or local agency pursuant to~~
8 ~~Section 832.5, or information obtained from these records, are~~
9 ~~confidential and shall not be disclosed in any criminal or civil~~
10 ~~proceeding except by discovery pursuant to Sections 1043 and~~
11 ~~1046 of the Evidence Code, and provided that peace officer or~~
12 ~~custodial officer personnel records that contain information~~
13 ~~required to be produced by the Constitution of the United States~~
14 ~~and retained as specified in subdivision (c) of Section 832.5 shall~~
15 ~~be disclosed in conformity with the provisions of Section 1043.1~~
16 ~~of the Evidence Code. This section shall not apply to~~
17 ~~investigations or proceedings concerning the conduct of peace~~
18 ~~officers or custodial officers, or an agency or department that~~
19 ~~employs those officers, conducted by a grand jury, a district~~
20 ~~attorney’s office, or the Attorney General’s office.~~

21 (b) ~~Notwithstanding subdivision (a), a department or agency~~
22 ~~shall release to the complaining party a copy of his or her own~~
23 ~~statements at the time the complaint is filed.~~

24 (c) ~~Notwithstanding subdivision (a), a department or agency~~
25 ~~that employs peace or custodial officers may disseminate data~~
26 ~~regarding the number, type, or disposition of complaints~~
27 ~~(sustained, not sustained, exonerated, or unfounded) made~~
28 ~~against its officers if that information is in a form which does not~~
29 ~~identify the individuals involved.~~

30 (d) ~~Notwithstanding subdivision (a), a department or agency~~
31 ~~that employs peace or custodial officers may release factual~~
32 ~~information concerning a disciplinary investigation if the officer~~
33 ~~who is the subject of the disciplinary investigation, or the~~
34 ~~officer’s agent or representative, publicly makes a statement he~~
35 ~~or she knows to be false concerning the investigation or the~~
36 ~~imposition of disciplinary action. Information may not be~~
37 ~~disclosed by the peace or custodial officer’s employer unless the~~
38 ~~false statement was published by an established medium of~~
39 ~~communication, such as television, radio, or a newspaper.~~
40 ~~Disclosure of factual information by the employing agency~~

1 pursuant to this subdivision is limited to facts contained in the
2 officer's personnel file concerning the disciplinary investigation
3 or imposition of disciplinary action that specifically refute the
4 false statements made public by the peace or custodial officer or
5 his or her agent or representative.

6 (e) (1) The department or agency shall provide written
7 notification to the complaining party of the disposition of the
8 complaint within 30 days of the disposition.

9 (2) The notification described in this subdivision shall not be
10 conclusive or binding or admissible as evidence in any separate
11 or subsequent action or proceeding brought before an arbitrator,
12 court, or judge of this state or the United States.

13 (f) Nothing in this section shall affect the discovery or
14 disclosure of information contained in a peace or custodial
15 officer's personnel file pursuant to Section 1043 of the Evidence
16 Code.

17 SEC. 4.

18 SEC. 5. If the Commission on State Mandates determines that
19 this act contains costs mandated by the state, reimbursement to
20 local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.